



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 28, 1995

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-544

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32321.

The City of Houston (the "city") received a request for information relating to various proposed street closures and openings proposed under City Ordinance No. 93-177. The city contends that the requested records are excepted from disclosure pursuant to section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

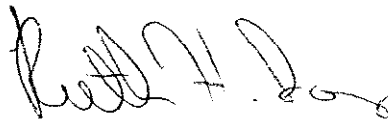
You have submitted to this office information showing that complaints about the proposed street closures and openings are currently under investigation by the United States Department of Housing and Urban Development ("HUD"). HUD has notified the city that the complaints being investigated were filed pursuant to title VI of the Civil Rights Act of 1964 and section 109 of the Housing and Community Development Act of 1964. The attorney representing the city in the investigation asserts that litigation is reasonably anticipated because of the extensive and ongoing federal investigation. The city's attorney also states that litigation is a remedy provided for under federal law. We agree that the city has met its burden of showing that litigation is reasonably anticipated. Our review of the records at issue, which were submitted to this office, shows that the records are related to the anticipated litigation.

However, our review of these documents indicates that not all of the information may be withheld from disclosure pursuant to section 552.103(a). Some of the information at issue appears to have been disclosed or adopted at public meetings. Information that is part of the record of a public meeting may not be withheld from disclosure under section 552.103(a). *See* Open Records Decision Nos. 551 (1990) at 2-3 (program of self-insurance and risk management adopted as ordinance in public meeting is part of public record), 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records").

The other information at issue may be withheld to the extent that the opposing parties to the anticipated litigation have not already had access. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. We note that as to the official records of public proceedings, the city may rely on this ruling as a prior determination under section 552.301 of the Government Code. This ruling otherwise is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding the other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 32321

Enclosures: Submitted documents

cc: Mr. Robert D. and Ms. Catherine B. Rooney  
8310 Twin Hills  
Houston, Texas 77071  
(w/o enclosures)